

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JEREMY CLARK,

Petitioner,

v.

Case No. 19-CV-181

BRIAN FOSTER,

Respondent.

RECOMMENDATION FOR DISMISSAL OF PETITION

Jeremy Clark, who is currently incarcerated at the Waupun Correctional Institution, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket # 1.) On February 13, 2019, I ordered Clark to file an amended petition utilizing the form provided and to fill it out in its entirety to facilitate screening of the petition. Clark responded by filing an objection to “the purported magistrate judge’s recommendation.” (Docket # 6.) I informed Clark that no recommendation had been issued in this case; thus, his objection was improper. (Docket # 7.) I again ordered Clark pursuant to Civil L.R. 9(a)(1) (E.D. Wis.) to file an amended petition using the form provided by the clerk’s office to allow me to identify with particularity the conviction being challenged, the constitutional claims asserted, and the procedural history of the case. (*Id.* at 1.) Clark was given until March 14, 2019 to file his amended petition, and was warned that if he failed to timely file an amended petition, I would recommend that his petition be denied and the case dismissed.

Clark has not timely filed an amended petition on the proper form. Under Civil L.R. 41(c) (E.D. Wis.), a court may enter an order of dismissal whenever it appears that a

plaintiff is not diligently prosecuting the action. Clark was warned that failure to comply with the February 28, 2019 order would result in a recommendation for dismissal of his petition. For these reasons, it is recommended that Clark's petition for writ of habeas corpus be dismissed without prejudice for failure to diligently prosecute.¹

NOW, THEREFORE, IT IS RECOMMENDED that Clark's petition be dismissed without prejudice.

Your attention is directed to General L.R. 72(c), 28 U.S.C. § 636(b)(1)(B) and Federal Rules of Criminal Procedure 59(b), or Federal Rules of Civil Procedure 72(b) if applicable, whereby written objections to any recommendation or order herein, or part thereof, may be filed within fourteen days of the date of service of this recommendation or order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of a party's right to appeal. If no response or reply will be filed, please notify the Court in writing.

Dated at Milwaukee, Wisconsin this 18th day of March, 2019.

BY THE COURT

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge

¹ Because the respondent has not yet appeared and had an opportunity to consent or refuse magistrate judge jurisdiction, I issue a report and recommendation. See *Coleman v. Labor and Industry Review Commission*, 860 F.3d 461(7th Cir. 2017).